

**(1976) 04 SHI CK 0008**  
**In the High Court Of Himachal Pradesh**  
**Case No : Civil Revision No. 47 of 1974**

Lakshmi Chand Sood

APPELLANT

Vs

Shankar Lal Pal

RESPONDENT

---

**Date of Decision :** 27-04-1976

**Acts Referred:**

Constitution of India, 1950 — Article 20(1)  
Himachal Pradesh Urban Rent Control Act, 1971 — Section 14(2), 5, 7, 8

**Citation :** AIR 1976 HP 16 : (1976) 5 ILR HP 284

**Hon'ble Judges :** R.S. Pathak, C.J.;C.R. Thakur, J

**Bench :** Division Bench

**Advocate :** D.P. Sud, for the Appellant; B. Sita Ram, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

R.S. Pathak, C.J.—The petitioner applies in revision u/s 21 (5) of the Himachal Pradesh Urban Rent Control Act, 1971 against an order of the Controller refusing to stay the proceedings for his eviction until the determination of the fair rent.

2. There is a residential building called "Mann House" situated at Shankli in Simla. The respondent is the owner, and the petitioner is the tenant of suite No. 9 therein.

3. On April 13, 1972 the petitioner filed an application u/s 5 of the Himachal Pradesh Urban Rent Control Act, 1971 for the determination of the fair rent of the accommodation occupied by him. That proceeding remained pending for almost six months and has not yet been disposed of.

4. On September 28, 1972 the respondent applied u/s 14 (2) (i) of the Act asserting that the tenancy of the petitioner had been terminated by notice, that the petitioner was in arrears of rent from April 1, 1972 to September 30, 1972 calculated in terms of the contractual rent, and had failed to pay despite demand. It was prayed that the petitioner be directed to put the respondent in possession.

5. On December 6, 1972 the petitioner applied that the eviction proceedings be stayed until the application for determination of the fair rent had been disposed of. By his order dated June 22, 1974 the Controller, Simla has rejected the application for stay, taking the view that until the fair rent was fixed the petitioner was obliged to pay the contractual rent. Against that order, the petitioner has filed the present revision petition.

6. The contention of Shri D.P. Sud, for the petitioner, is that the disposal of an application for eviction u/s 14 (2) of the Act filed on the ground that the tenant has not paid or tendered the rent due must await the disposal of an application u/s 5 of the Act for determination of the fair rent. The submission of learned counsel is that when the fair rent is determined u/s 5 it represents the rent due from the commencement of the contract of tenancy or of the statute, whichever is later, and in any event it represents the rent payable from the date of the application for eviction. It is on that basis, he says, that the amount due by a tenant has to be determined and the eviction petition disposed of. It is pointed out that therefore the application for determination of the fair rent must be disposed of first and only thereafter can the application for eviction be proceeded with. In support of the proposition that the determination of fair rent payable operates also for the period before such determination, learned counsel for the petitioner relies on Sections 7, 8 and 9 of the Act. The case of the respondent, on the contrary, is that the fair rent represents the rent payable for the period following the determination of fair rent.

7. Section 5 of the Act empowers the Controller to fix the fair rent of a building on application made by the tenant or landlord. In determining the fair rent the Controller is required to fix the basic rent first, having regard to the rent prevailing in the locality for the same or similar accommodation and the rental value of the building in question as entered in the property tax assessment register of the local authority in respect of the twelve months prior to August 15, 1947. For the purpose of fixing the fair rent, a specified accretion is permitted to the basic rent varying with different categories of buildings. By virtue of Section 6 the fair rent fixed in respect of the building cannot be increased except where some addition, improvement or alteration has been carried out. Sections 7, 8 and 9 of the Act read as follows:--

"7 (1) Save as provided in Section 6, when the Controller has fixed the fair rent of a building or rented land u/s 5:--

(a) the landlord shall not claim or receive any premium or other like sum in addition to fair rent, or any rent in excess of such fair rent, but the landlord may stipulate for and receive in advance an amount not exceeding one month's rent;

(b) any agreement for the payment of any sum in addition to rent or of rent in excess of such fair rent shall be null and void.

(2) Nothing in this section shall apply to the recovery of any rent which became due before the 15th day of August, 1947.

8 (1) Subject to the provisions of this Act, no landlord shall claim or receive any rent in excess of the fair rent, notwithstanding any agreement to the contrary.

(2) No landlord shall, in consideration of the grant, renewal or continuance of a tenancy or a sub-tenancy of any building or rented land claim or receive the payment of any premium, puggree, fine, advance or any other like sum in addition to the rent.

(3) Nothing in this section shall apply to any payment under any subsisting agreement entered into before the 15th day of August, 1947.

9 (1) Where any sum has, whether before or after the commencement of this Act, been paid which sum is by reason of the provisions of this Act not payable, such sum shall, at any time within & period of one year after the date of the payment, or in the case of a payment made before the commencement of this Act, within one year after the commencement thereof, be recoverable by the tenant by whom it was paid or his legal representative from the landlord who received the payment or his legal representative, and may without prejudice, to any other method of recovery be deducted by such tenant from any rent payable within such one year by him to such landlord.

(2) In this section the expression "legal representative" has the same meaning as in the Code of Civil Procedure, 1908 and includes also, in the case of joint family property, the joint family of which the deceased person was a member."

On a plain reading of Section 7 it seems clear that it is only when the Controller has fixed the fair rent of a building that the landlord is prohibited from claiming or receiving any rent in excess of the fair rent. That is also apparent from Section 8. Both Sections 7 and 8 lay down a statutory injunction restraining the landlord from claiming or receiving rent in excess of the fair rent. The difference between the two sections lies in this, that while u/s 7 an agreement for the payment of any sum as rent in excess of the fair rent is declared null and void, u/s 8 the injunction operates against the landlord "notwithstanding any agreement to the contrary". The difference between the two sections indicates at once the prospective nature of the determination of "the fair rent. The agreement referred to in Section 7 (1) for the payment of rent in excess of the fair rent is an agreement entered into after the fair rent has been determined. For that reason, the agreement is treated as null and void. On the other hand, the agreement referred to in Section 8 is an agreement entered into before the fair rent could be determined, and it is therefore that the statute advisedly uses the words "notwithstanding any agreement to the contrary". In other words, such an agreement is not permitted to operate in contravention of the statutory injunction provided against the landlord by Section 8. It is an agreement which operates so long as the fair rent is not determined, but once the determination has been made it is the fair rent which governs the tenancy notwithstanding the agreement.

8. The second indication evidencing the prospective nature of the determination

of the fair rent is the circumstance that if the landlord contravenes the injunction embodied in Section 7 or Section 8 a contravention of the injunction is punishable with imprisonment and with fine u/s 25 (2) of the Act, If the determination of fair rent operates retrospectively, a landlord who recovers an amount under a contract which on subsequent determination u/s 5 turns out to be in excess of the fair rent would be guilty of an offence. One of the primary and well accepted canons of statutory interpretation is that the Legislature does not make an act punishable which on the date of its commission had not been constituted an offence. Article 20 (1) of the Constitution provides that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence. The prohibition against ex post facto legislation in the Constitution of the United States has been explained in *Calder v. Bull* (1798) 1 LEd 648 and *Gumming v. Missouri* (1867) 18 LEd 356 while in England the principle has received attention in *Philips v. Eyre* (1870) 6 QB 1 . In *Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh*, the Supreme Court of India considered it to be a paramount principle that ex post facto laws which retrospectively create offences and punish them are bad "as being highly inequitable and unjust". Under the American Law ex post facto legislation is declared invalid by the courts. In the English courts, the law is construed where possible as operating prospectively only. It seems to me that the principle applied by the English courts calls for application in the present case. Sections 7 and 8 are reasonably capable of the construction that they operate with respect to the future only.

9. The third indication showing that the fixation of fair rent operates prospectively only appears from Section 9 (1) of the Act As is apparent from its provisions, a tenant is entitled to recover a sum which, whether paid before or after the commencement of the Act, is by reason of some provision of the Act not payable. Where payment has been made before the commencement of the Act, the period prescribed for recovering it is one year after the commencement of the Act Where the payment has been made after the commencement of the Act the period for recovery is one year after the date of payment. Now the right of a tenant to recover a sum paid before the commencement of the Act arises by virtue of the fact that under some provision of the Act payment of that character is not permitted. In other words, although the payment was made before the Act came into operation and therefore, when made was not prohibited, it is by the operation of the Act subsequently that the sum becomes recoverable. The position amounts to this. When the tenant made the payment the Act did not forbid such payment and quite possibly the tenant paid because he was obliged to do so. Subsequently, when the Act came into operation it prohibited the landlord from claiming or receiving that kind of payment. The Act did not declare any payment made before it to be contrary to law. It did not declare that the money paid by the tenant before it commenced was paid contrary to its provisions. The Act was not made retrospective. What the Act has done is to enact in Section 9 that although the payment when made was rightly made,

nevertheless on the Act coming into operation a right has been given to the tenant to recover the amount so paid before its commencement. The obligation to pay has not itself been interfered with. The Act merely declares that even though the tenant was obliged to pay before the Act came into force, with the commencement of the Act a right now accrues to the tenant to recover that which he had paid. Therefore, if within one year after the commencement of the Act a tenant obtains an order from the Controller fixing the fair rent, and it is found that he had paid the rent in excess of the figure representing the fair rent, then although the fixation of fair rent is prospective only Section 9 expressly entitles the tenant to recover the excess paid during the period before the commencement of the Act. It is clear that as the Act is not retrospective in operation a provision such as Section 9 was necessary to enable the tenant to recover the excess paid before the commencement of the Act. Similarly, a sum paid after the commencement of the Act but before the fair rent is fixed can be recovered by the tenant within a year of the payment. For that purpose he must obtain an order fixing the fair rent within that period. Here again, although the amount paid as rent before the fair rent was fixed was rightly paid by virtue of the contract between the parties, Section 9 nevertheless entitles the tenant to recover the excess paid within a year of the payment even though the fair rent was fixed subsequently. Had the fixation of fair rent operated retrospectively, the tenant would have been entitled, without anything more, to recover the excess over the figure of the fair rent paid by him. It is because the fixation of fair rent is prospective only that it became necessary to enact Section 9, so as to enable the tenant to recover the excess paid before the fair rent was fixed.

10. In my judgment, the fixation of fair rent operates prospectively only. It operates from the date the fair rent is fixed and not from any earlier date.

11. In that view of the matter when a landlord applies u/s 14 (2) (i) of the Act for the eviction of the tenant on the ground that the tenant has not paid or tendered the rent due by him within the statutory period mentioned therein, it is hardly relevant for the tenant to plead in his reply to the application that the fair rent should be fixed and the liability to pay the arrears should be determined on the basis of the fair rent. Inasmuch as the liability to pay the fair rent only arises prospectively with effect from the date the fair rent is fixed, the fixation of the fair rent is not relevant at all for the purpose of determining the true figure of the arrears of rent. The arrears of rent have to be calculated on the basis of the contract between the parties inasmuch as the period for which the tenant is in default precedes the date from which the fair rent is payable, viz. the date of fixation of fair rent. If the subsequent fixation of fair rent does not effect the liability to pay the arrears of rent for a period before the fair rent is fixed, any plea taken in the reply to the eviction application u/s 14 (2) (1) of the Act cannot be based on the fixation of fair rent. It is, therefore, not correct to say that when an application for eviction is made by a landlord u/s 14 (2) (i) the proceedings must be hold up to enable the fixation of fair rent first. That will be so even if the application for fixation of fair rent has been filed before the application for

eviction. It would have been a different matter if the fixation of fair rent operates retrospectively to the date of the making of the application. But that, in my opinion, is not a possible view having regard to the considerations already mentioned above. In this connection it is relevant to note that when Section 9 (1) entitles a tenant to deduct the excess amount paid in the past over the fair rent, the deduction has to be made from the rent payable in the future within one year of the payment of the excess amount. No deduction is contemplated where the tenant has not in fact paid the rent due in the past. He cannot be heard to say that although he has not paid such rent he is not in arrears because the figure of fair rent wipes out the amount which had fallen due in the past and which has not been paid by him. Section 9 (1) entitles the tenant to deduct from rent payable in future the excess actually paid in the past. It does not entitle him to reduce his liability of the past by reference to the fair rent.

12. Inasmuch as the pending application for fixation of fair rent is not relevant for the purpose of deciding an application for eviction filed u/s 14 (2) (i) of the Act, no question arises of staying the proceedings on the latter application. In the circumstances, it is unnecessary to consider the cases relied on by Shri D.P. Sud to show that the Controller has power to stay the proceedings before him on the basis of the principle embodied in Section 10 of the Code of Civil Procedure.

13. Reliance has been placed on M.M. Chawla Vs. J.S. Sethi, That case is distinguishable. The Supreme Court was concerned there with the Delhi Rent Control Act, 1958. Section 14 of that Act contemplated an application by the landlord for the recovery of possession of the premises on the ground that the tenant had neither paid nor tendered the arrears of rent legally recoverable from him within two months of the date on which a notice of demand for the arrears had been served. Section 15 (1) provides that in such a proceeding for the recovery of possession the Controller shall make an order directing the tenant to pay to the landlord or deposit with the Controller within one month of the date of the order an amount calculated at the rate of rent at which it was last paid for the period for which the arrears of rent were legally recoverable. Section 15 (3) provides that if in a proceeding u/s 15 (1) there is a dispute as to the amount of rent payable by the tenant the Controller shall within fifteen days of the first hearing of the proceeding fix an interim rent to be paid or deposited by the tenant until the standard rent in relation to the premises is fixed, and the amount of arrears calculated on the basis of the standard rent shall thereafter be paid or deposited by the tenant. There is no such provision in the Himachal Pradesh Urban Rent Control Act, 1971.

14. We have also been referred to Hari Kam Dhupar Vs. Rajinder Singh and Another, . In that case a learned Single Judge of the Delhi High Court held that even though an application for eviction of the tenant was not specifically based on the ground of his default in payment of arrears of rent it was open to the tenant to pray for the fixation of standard rent in his written statement filed to the eviction application. I am unable to see how the observations in that case are

of any assistance to the present petitioner.

15. One of the contentions of Shri D.P. Sud is that the landlord can charge only reasonable rent, and the reasonable rent is the amount payable by the tenant determined on the basis of the provisions of Section 5 of the Act for fixation of fair rent. He says that if that contention is accepted no case can arise of a contravention of Section 7 or Section 8 and therefore of punishment u/s 25 (2) in respect of an act done before the fair rent was fixed. The contention is misconceived. As long as a contract of tenancy is in force, the landlord is entitled to rent payable under that contract. It is difficult for any landlord to determine what should be the reasonable rent with reference to the provisions of Section 5 of the Act. Section 5 does not automatically result in the determination of the fair rent at any definite predictable figure. The fair rent is not determined in a mechanical manner. It will depend upon the individual judgment of the particular Controller, Section 5 merely prescribes the criteria with reference to which the Controller will exercise his judgment. He will take into consideration those criteria, but the ultimate figure determined by him will depend upon the circumstances of each individual case. When a discretion has been conferred by the statute on the Controller in the matter of determining what should be the fair rent, plainly the discretion will vary from Controller to Controller and it cannot be said that before the fair rent has been fixed it is possible for the landlord to anticipate what should be the fair rent or, as Shri D.P. Sud would put it, the reasonable rent. A number of cases have been cited by Shri Sud for the purpose of indicating the scope of the expression "reasonable". Upon what I have said above, it is not necessary to refer to those decisions.

16. Shri Sud then relies on *Rajammal Vs. The Chief Judge, Court of Small Causes and Another*, where the Madras High Court held that when the fair rent is fixed u/s 4 of the Madras Buildings (Lease and Control) Act, 1946 the fair rent so fixed rules from the date of the application for fixing the fair rent. The learned Judges were concerned with the question whether the fair rent so fixed should not rule from the date of the commencement of the Act. They held that it did not. They were not concerned in that case with the question whether the fixation of the fair rent operates only from the date the fixation is effected. For the same reason, the view taken in *George Oakes Ltd. Vs. The Chief Judge, Small Causes Court and Another*, and *Hari Rowji Gore Sastri Vs. The Malabar District Board*, is distinguishable. It has not been shown to us that the provisions of the statute with which the Madras High Court was concerned in the three cases mentioned above were analogous to the provisions of the Himachal Pradesh statute before us. Shri D.P. Sud also relies on *Nandu Ram v. Jagannath Parshotam Das* AIR 1953 Him 53 but it seems to me that the observations in that case run contrary to what he suggests. And in so far as the Judicial Commissioner can be said to have implied that an order for fixation of fair rent can operate retrospectively, it is difficult for me, with respect, to agree with him in a case such as the one before us.

17. The revision petition has no force and is dismissed, but in the circumstances there is no order as to costs.

C.R. Thakur, J.

18. I agree.